

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

CHERRY OAK LANDSCAPING, LLC.,

Plaintiff,

No. 20-000064-CB-C30

V

OPV PARTNERS, LLC d/b/a  
AUTUMN RIDGE TOWNHOMES  
AND APARTMENTS,

**OPINION AND ORDER  
DENYING MOTION FOR  
RECONSIDERATION**

Defendant.

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At a session of said Court held in Lansing,  
Ingham County, Michigan, on May 14, 2021

PRESENT: Honorable Joyce Draganchuk  
Circuit Judge

Defendant has filed this motion for reconsideration following the Court's ruling granting Plaintiff's motion for partial summary disposition. The Court ruled that the parties' Master Contract unambiguously incorporated Attachment A.

First, without citing MCR 2.119(F)(3) or the palpable error standard, Defendant says it disagrees with the Court's ruling that the entirety of Attachment A was incorporated into the Master Contract. Defendant made the same argument at the hearing on Plaintiff's motion. The Court has already ruled on this matter and will not rehash the ruling here. There is no palpable error shown that would require a different result.

Second, Defendant points to alleged discrepancies between the Master Contract and Attachment A and argues that the Court has now created ambiguity in the parties' agreement with regard to payment terms. This is incorrect for several reasons.

The Court's ruling was that the Master Contract unambiguously incorporated Attachment A. The parties are free to incorporate anything they wish into the contract. The Court looks to the intent expressed in the contract. If the parties incorporated a document that had terms that conflicted with their contract, then they would end up with a contract with conflicting terms no different than if they wrote a contract with conflicting terms that did *not* incorporate another document. Defendant points to no authority saying that if terms in an incorporated document conflicted with the contract then the parties could not have intended to incorporate that document. In fact, parties contract all the time to contracts with conflicting terms.

Moreover, the conflicts that Defendant points to aren't conflicts at all. Defendant says that Attachment A has a provision for interest and attorney fees but the Master Contract does not. Yes, that is true and that is exactly why parties incorporate other documents into their contracts – to make their provisions more complete. The same response applies to Defendant's argument that the Master Contract requires sworn statements and lien waivers before payment but Attachment A does not.

Lastly, Defendant argues that there is a conflict between the Master Contract, which provides "net 60 days," and Attachment A, which provides "any balance not collected within 30 days of due date is subject to a finance charge of 1.5% per month or 18% per annum."

This alleged conflict goes beyond the ruling of the Court, which was that the parties unambiguously incorporated Attachment A into the Master Contract. But the Court nevertheless notes that "net 60 days" means that payment on an invoice is due within 60 days of receipt. The Master Contract has no provision – no penalty – for not paying within

60 days so the provision is meaningless without Attachment A. Attachment A imposes that penalty when 30 days have elapsed since the due date. These provisions are neither ambiguous nor conflicting.

Defendant's third issue for reconsideration is that the attorney fee provision in Attachment A is too indefinite to enforce. That argument has no place in a motion for reconsideration because it was not part of the Court's ruling or the subject of any motion. Defendant can bring its own motion on this issue, but the Court notes that commercial contracts of all kinds frequently have similar enforceable provisions that are no more specific than that a party will pay attorney fees and costs for collections.

IT IS HEREBY ORDERED that Defendant's motion for reconsideration is denied.

/s/

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Joyce Draganchuk (P39417)  
Circuit Judge

#### **PROOF OF SERVICE**

I hereby certify that I served a copy of the above Opinion and Order Denying Defendant's Motion for Reconsideration upon the attorneys of record by placing said document in sealed envelopes addressed to each and depositing same for mailing with the United States Mail at Lansing, Michigan, on May 14, 2021.

/s/

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Michael Lewycky  
Law Clerk/Court Officer